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Individually and on Behalf of All Those Similarly Situated*

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

SHANNON RAY, KHALA TAYLOR, PETER
ROBINSON, KATHERINE SEBBANE, and
RUDY BARAJAS Individually and on Behalf of
All Those Similarly Situated,

Plaintiffs,

v.

NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION, an unincorporated association,

Defendant.

Case No. 1:23-cv-00425

**PLAINTIFFS' NOTICE OF REQUEST
TO SEAL DOCUMENTS AND AMEND
FILINGS TO COMPLY WITH POST-
FILING CLAWBACK REQUESTS**

Judge: Hon. William B. Shubb
Courtroom: 5, 14th Floor
Date: March 3, 2025
Time: 1:30 PM

TO DEFENDANT AND ITS ATTORNEYS OF RECORD AND TO THE UNITED STATES
DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA:

Pursuant to Local Rule 141, please take notice that on December 13, 2024, Plaintiffs
Shannon Ray, Khala Taylor, Peter Robinson, Katherine Sebbane, and Rudy Barajas (“Plaintiffs”)
served the following documents by electronic mail to United States District Judge William B.
Shubb and on all Defendants:

1. Plaintiffs’ Amended Notice of Motion and Motion for Class Certification (Sealed
Version);
2. Exhibit 1 to the Amended Declaration of Michael Lieberman in Support of Plaintiffs’
Motion for Class Certification and Appointment of Fairmark Partners, LLP as co-Lead
Class Counsel;
3. Exhibit 32 to the Amended Declaration of Michael Lieberman in Support of Plaintiffs’
Motion for Class Certification and Appointment of Fairmark Partners, LLP as co-Lead
Class Counsel;
4. Exhibit 33 to the Amended Declaration of Michael Lieberman in Support of Plaintiffs’
Motion for Class Certification and Appointment of Fairmark Partners, LLP as co-Lead
Class Counsel;
5. Exhibit 34 to the Amended Declaration of Michael Lieberman in Support of Plaintiffs’
Motion for Class Certification and Appointment of Fairmark Partners, LLP as co-Lead
Class Counsel;
6. Request to Seal Documents and Amend Filings to Comply with Post-Filing Clawback
Requests; and
7. [Proposed] Order.

This Notice and the accompanying Request to Seal Documents And Amend Filings To Comply With Post-Filing Clawback Requests that is contemporaneously being served by electronic mail to the Court and Defendant concern three categories of documents: (1) documents that are the subject of post-filing clawback requests from third parties; (2) documents marked by the producing parties as “Confidential” or “Attorney’s Eyes Only” pursuant to the Protective Order, that Defendant believes should be redacted in public filings, and that Plaintiffs do not oppose the redaction of in public filings; and (3) documents marked by the producing parties as “Confidential” pursuant to the Protective Order, and that Defendant believes are confidential and should be redacted in public filings, but that Plaintiff believes are not confidential and should not be redacted in public filings. Prior to filing this Notice and the accompanying Request to Seal, Plaintiffs conferred with Defendant and conveyed their belief that this third category of documents not be filed under seal. Defendant maintained that they should retain their “Confidential” designation, and thus should be subject to a Request to Seal in accordance with the Protective Order. See ECF No. 56 at 15.

I. DOCUMENTS AS TO WHICH NCAA OR THIRD PARTIES ASSERT CONFIDENTIALITY CLAIMS AND PLAINTIFFS DO NOT OPPOSE

Plaintiffs originally filed a request to seal all documents submitted with, and referenced in, their filed motion for Class Certification that had been designated as “Confidential” or “Attorney’s Eyes Only” by the producing parties under the Protective Order. This Court rejected Plaintiffs’ request to seal without prejudice. Plaintiffs and the NCAA subsequently met and conferred and negotiated with respect to the claims of confidentiality of those documents and that information. As a result of that process, disputes over all but two claims of confidentiality have been resolved, with the NCAA withdrawing confidential designations as to some and the Plaintiffs agreeing not to oppose the request to seal as to others. The documents in this category are described in the following table, and additional information about the content of those documents and Defendant’s reasons in support of redaction are provided in the accompanying Request to Seal:

Exh. No.	Description	Bates No.	Reason for Request	Plaintiffs' Position	Defendant's Position
None	Plaintiffs' Amended Notice of Motion and Motion for Class Certification	None	Contains data from NCAA's Membership Financial Reporting System designated by NCAA as Attorney's Eyes Only	Plaintiffs do not oppose sealing	Defendant requests sealing
1	Corrected Expert Report of Orley Ashenfelter	None	Contains data from NCAA's Membership Financial Reporting System designated by NCAA as Attorney's Eyes Only	Plaintiffs do not oppose sealing	Defendant requests sealing
34	Email from Erica Aresco to Jacqueline Blackett regarding Volunteer Coaches, dated June 14, 2023	COLON_CONFERENCE_0000206202	Designated by Producing Party as Confidential under Stipulated Protective Order	Plaintiffs do not oppose sealing	Defendant does not oppose sealing

II. DOCUMENTS AND INFORMATION AS TO WHICH THE NCAA CONTINUES TO ASSERT DISPUTED CLAIMS OF CONFIDENTIALITY AFTER MEETING AND CONFERRING

Plaintiffs originally filed a request to seal all documents submitted with, and referenced in, their filed motion for Class Certification that had been designated as "Confidential" by the producing parties under the Protective Order. This Court rejected Plaintiffs' requests to seal without prejudice. Plaintiffs and the NCAA subsequently met and conferred and negotiated with respect to the claims of confidentiality of those documents and that information. As a result of that process, disputes over all but two claims of confidentiality have been resolved, with the NCAA

withdrawing confidential designations as to some and the Plaintiffs agreeing not to oppose the request to seal as to others. The two documents that remain disputed are described in the following table, and additional information about the content of those documents and Defendant's reasons in support of redaction are provided in the accompanying Request to Seal:

Exh. No.	Description	Bates No.	Reason for Request	Plaintiffs' Position	Defendant's Position
32	Memorandum to the NCAA Division I Management Council regarding Commentary Regarding Proposed Changes in Division I Legislation in which the Division I Management Council did not take a position, dated February 28, 2001	NCAA_SMA RT-COLON_0179 751	Designated by Defendant as Confidential under Stipulated Protective Order	Unredacted version should be filed in public record	Defendant requests sealing
33	Email from Leeland Zeller to Steve Mallonee regarding Proposals, dated September 6, 2018	NCAA_SMA RT-COLON_0140 536	Designated by Defendant as Confidential under Stipulated Protective Order	Unredacted version should be filed in public record	Defendant requests sealing

The Request to Seal is made pursuant to Local Rule 141 and is based upon this Notice of Request, the Request, all pleadings, papers, and records on file in this action, and any oral argument presented to the Court. The Court may issue orders limiting disclosures of confidential information where compelling reasons exist. *See Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir. 2009); *Felix v. Davis Moreno Constr., Inc.*, No. 07 Civ. 0533, 2008 WL 3009867, at *1-2 (E.D. Cal. Aug. 1, 2008); E.D. Cal. L.R. 141. Plaintiffs make the Request at Defendant's request and in light of the Court's prior denial of Plaintiffs' request to seal. ECF No. 90. Upon the

Court's approval of the Request, Plaintiffs will file through the Court's CM/ECF system redacted publicly available versions of Plaintiffs' Amended Notice of Motion and Motion for Class Certification and supporting exhibits and declarations.

III. DOCUMENTS THAT ARE THE SUBJECT OF POST-FILING CLAWBACK REQUESTS FROM THIRD PARTIES

On November 13, 2024 and November 20, 2024, respectively, Plaintiffs received clawback requests from producing third parties. Those requests asked to claw back two documents (Exhibits 45 and 46 to the Declaration of Michael Lieberman) that Plaintiffs cited in their Notice of Motion and Motion for Class Certification. The third parties asserted that the documents reflected attorney client privileged communications and were inadvertently produced. The NCAA joined in that assertion of attorney client privilege. Although Plaintiffs dispute that the documents which are the subject of the clawback requests are privileged, Plaintiffs are complying with the demand without prejudice and have enclosed an Amended Notice of Motion and Motion for Class Certification that removes all references to the clawed back documents. The amended filing and supporting documents should be used in place of the originals. No court action regarding these documents is requested at this time.

DATED: December 13, 2024

Respectfully submitted,

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